

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Exclusive Service Contracts for Provision of)	MB Docket No. 07-51
Video Services in Multiple Dwelling Units and)	
Other Real Estate Developments)	
)	

COMMENTS OF LITESTREAM HOLDINGS, LLC

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INTRODUCTION

Litestream Holdings, LLC (“Litestream”) is a provider of cable television and high speed Internet services located in Florida. By any of the definitions adopted by the Commission, Litestream qualifies as a small cable operator.¹ As a small cable operator, it is essential that Litestream is able to enter into and maintain exclusive contracts to be able to compete against incumbents for the opportunity to provide services to to-be-built communities. Because these new-build situations, particularly in single family home communities, require a substantial investment to reach and service, exclusive contracts affords Litestream the only means possible to undertake the capital investment and incur the infrastructure costs necessary to provide services in competition with significantly larger providers that dominate the market. If the Commission impairs Litestream’s existing contracts or ability to enter into new exclusive contracts for to-be-built communities, quite simply, Litestream will no longer be capable of offering competition in this market.

LITESTREAM’S BACKGROUND AND ABILITY TO COMPETE

Litestream is privately owned and has been operating approximately five years. It is the only county-wide franchised competitor to Comcast in St. Johns County, Florida, and has recently acquired franchises in 3 other Florida Counties where again Comcast is the only significant cable MSO. As such, Litestream is the only land-based competition to Comcast in the markets in which it operates. Litestream currently serves or operates service for a total of 16 current or to-be-built communities, which at buildout will have

¹ Under the Commission’s rules, a “small cable company” is one serving 400,000 or fewer subscribers nationwide. 47 C.F.R. §76.901(e). The Commission determined that this size equates approximately to \$100 million or less in annual revenues. *Implementation of Sections of the 1992 Cable Act: Rate Regulation*, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995). Under either definition, Litestream qualifies as a small cable company.

approximately 9,000 subscribers. Essentially all of Litestream's subscribers live within homeowner or condominium associations ("Associations") and over 90% of Litestream's present customers receive service from Litestream pursuant to exclusive contracts with such Associations.

Litestream's cable and broadband services are competitive with and comparable to the services offered by the dominant franchised multiple system operator ("MSO"), the two national direct broadcast satellite ("DBS") providers, and the Incumbent Local Exchange Carrier ("ILEC") that provide services in Litestream's service areas. Litestream's systems offer basic and expanded cable services, High Definition TV, digital and other premium and advanced cable services, as well as high speed broadband Internet access. Litestream has a CLEC license and anticipates offering a voice product to offer its customers a "triple play" of services.

While Litestream's technology and services are competitive and often superior with large MSO and ILEC, Litestream cannot undertake the capital investment necessary serve a new community by building in parallel with the dominant MSO or ILEC to compete head-to-head for customers. The MSO advantages in name recognition, familiarity, credibility, and continuity-of-service ensure that the MSO gets a majority of customers when building in parallel with a small private competitor. Small PCO's such as Litestream cannot afford to build infrastructure to reach and serve a new community just to end up serving only a minority of its residents. This is the environment in which small cable operators, such as Litestream, must compete. Large MSOs, DBS providers, and ILEC simply have enormous advantages as a result of their capital and market power.

Litestream competes directly against the MSO for the exclusive service contract and is glad to continue to do so on an even playing field. These so-called "bulk"

contracts provide deep discounts on video and data services for the benefit of the consumers, and in addition, to compete also provide Associations additional services such as community channels solely for residents, security channels on which residents can view the community's entrances. In addition, Litestream believes it competes for and occasionally wins these exclusive contracts based on its reputation for quality of customer service.

THE COMMISSION SHOULD NOT TAKE ANY ACTION THAT WOULD HARM THE ABILITY OF SMALL CABLE OPERATORS TO COMPETE FOR EXCLUSIVE CONTRACTS TO SERVE TO-BE-BUILT SINGLE FAMILY DEVELOPMENTS

The Commission Should Not Impair or Regulate Exclusive Agreements Between Small Cable Operators and Developers or Associations.

Litestream has entered into several exclusive bulk agreements with Associations in new and to-be-built single family communities, to provide video and data services. In the Florida markets in which it operates, Litestream is now the only significant land-based competition to Comcast. If the Commission interferes with these existing contracts it will destroy Litestream as a company. If the Commission prevents Litestream from competing for new exclusive contract, it will eliminate Litestream as a competitor to Comcast in its markets.

Small cable operators such as Litestream do not have the name recognition, marketing power, or sales force as the MSO, large DBS providers, and the ILEC. They must compete based on their local reputation. To remain a successful competitor, Litestream and small cable operators must provide excellent service. They cannot be complacent or non-responsive to their customers. The developers with whom Litestream negotiates such contracts have become very sophisticated. They understand that to sell their units successfully, they must ensure that buyers have first rate cable and Internet

services available at reasonable rates. They will not enter agreements that may impact negatively their ability to sell homes. Similarly, Associations will not take risks with their residents' cable and Internet services.

As the Commission can well appreciate, this is an extremely competitive negotiation. The dominant MSO and ILEC and often many other service providers are able to provide services if a property does not reach agreement with Lifestream. Lifestream's existing exclusive contracts are thus the product of arms-length negotiations in a very competitive environment. Such contracts benefit consumers by ensuring first rate services at discounted rates. Lifestream respectfully submits that any action by the Commission that affects its existing contracts will not only harm Lifestream, but will deprive consumers from realizing the benefits of their negotiated contracts.

Exclusive contracts with small cable operators do not impede the goals of enhancing competition and accelerating the deployment of broadband. Rather, they support such goals by ensuring that small cable operators compete aggressively and offer an alternative to the area's MSO or ILEC. With respect to the enforcement of the terms of the exclusive contracts, which carry the additional consumer benefit of guaranteeing specified levels of service, the Association has the power to enforce the contracts for the benefits of the residents. Traditionally, states have regulated contract law; states not only share the Commission's policies supporting competition in cable services and broadband deployment, but have authority to protect consumers that are not available to the Commission.

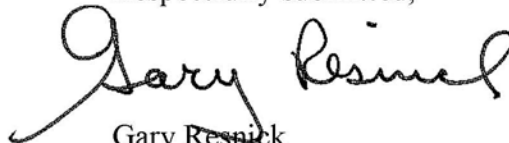
Any action by the Commission that impairs Lifestream's existing exclusive contracts or its ability to enter into such contacts in the future will eliminate Lifestream, as well as other small cable operators, from this market. Accordingly, Lifestream

respectfully requests that the Commission not regulate or impair exclusive contracts entered into by small cable operators.

CONCLUSION

Litestream respectfully requests that the Commission not take any action that would impair Litestream's existing contracts or its ability to enter into such exclusive bulk contracts in the future. For the reasons noted above, any such action by the Commission would put an end to small cable operators' ability to compete. To the extent the Commission regulates exclusive contracts, the Commission should exempt contracts entered into by small cable operators, and particularly exempt to-be-built single family developments. By protecting Litestream's ability to fairly compete for and occasionally win such contracts Litestream will be able to continue to offer competition for video and broadband services against the MSO in the markets it serves.

Respectfully submitted,

A handwritten signature in black ink that reads "Gary Resnick". The signature is fluid and cursive, with the first name "Gary" and last name "Resnick" clearly legible.

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